

No. 21-1616

IN THE
United States Court of Appeals for the Fourth Circuit

THOMAS KRAKAUER,
Plaintiff-Appellee,
v.

DISH NETWORK L.L.C.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of North Carolina
No. 1:14-cv-00333-CCE-JEP,
Hon. Catherine C. Eagles

**JOINT MOTION FOR LIMITED REMAND UNDER
RULE 12.1(b) AND TO HOLD THE APPEAL IN
ABEYANCE UNDER LOCAL RULE 12(d)**

Eric A. Shumsky
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street
Washington, DC 20005
(202) 339-8400

Elyse D. Echtman
STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 378-7551

Counsel for Defendant-Appellant

Pursuant to Federal Rules of Appellate Procedure 12.1 and 27 and Local Rule 12(d), the Defendant-Appellant DISH Network L.L.C. (“DISH”) and the Plaintiff-Appellee Thomas Krakauer (“Krakauer”) jointly move the Court for an order (i) effectuating a limited remand to the district court for purposes of finalizing the district court’s approval of the parties’ class action Settlement Agreement; and (ii) holding this appeal in abeyance pending a final order from the district court approving the parties’ class action Settlement Agreement and authorizing the disbursement of funds to DISH.

1. On July 24, 2023, the parties entered into a Settlement Agreement that resolves all remaining disputed issues in this class action, inclusive of this pending appeal, subject to district court approval pursuant to Federal Rule of Civil Procedure 23(e).

2. The Settlement Agreement provides, *inter alia*, for disbursement of \$6 million of the unclaimed judgment funds held by the district court clerk to DISH. The remainder of the unclaimed judgment funds, in the amount of approximately \$16.5 million, shall be available for *cy pres* distribution as directed by the district court.

3. On July 25, 2023, the parties jointly moved the district court, pursuant to Federal Rules of Civil Procedure 23(e) and 62.1, for an indicative ruling stating that it would approve the settlement. DE 662, 663.

4. On July 26, 2023, the district court entered an Order Granting the Parties' Joint Motion for Indication of Approval of Class Action Settlement. DE 664. The Order states: "Under Fed. R. Civ. P. 62.1(a), the Court issues this indicative ruling that it would grant the Parties' motion for approval of the Settlement Agreement if the Court of Appeals remands for that purpose. The Court has extensive familiarity with this case and has examined the proposed settlement with care. The proposed settlement is fair, adequate and reasonable." *Id.*

5. On July 28, 2023, DISH filed a Notice of indicative ruling with this Court under Federal Rule of Appellate Procedure 12.1.

6. Now that the district court has issued its indicative ruling, this Court may issue a limited remand under Federal Rule of Appellate Procedure 12.1(b) for purposes of empowering the district court to grant final approval of the Settlement Agreement under Federal Rule of Civil Procedure 23(e) and order the disbursement of settlement funds as

provided therein. *See* [Fed. R. App. P. 12.1\(b\)](#) (“If the district court states that it would grant the motion, . . . the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal.”)

7. The parties therefore respectfully request that the Court issue a limited remand under [Federal Rule of Appellate Procedure 12.1\(b\)](#) solely for purposes of the district court’s approval of the Settlement Agreement and disbursement of the settlement funds to DISH, and otherwise retain jurisdiction of the appeal.

8. The parties further request that this Court hold this appeal in abeyance pending the district court’s final approval of the Settlement Agreement and disbursement of settlement funds to DISH. At that point, the parties’ settlement would moot this appeal: The Settlement Agreement terms provide for DISH to dismiss this appeal with prejudice within ten court days following its receipt of the \$6 million from the unclaimed judgment funds (at which point the district court would have full jurisdiction to continuing disbursing the remaining unclaimed funds pursuant to the settlement terms). Placing this appeal in abeyance, pending the district court’s final approval of the

Settlement Agreement and the disbursement of funds to DISH, is in the interests of this Court's judicial resources and docket control.

Respectfully submitted,

/s/ Elyse D. Echtman

Eric A. Shumsky
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street
Washington, DC 20005
(202) 339-8400

Elyse D. Echtman
STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 378-7551

Counsel for Defendant-Appellant

/s/ John W. Barrett

John W. Barrett
Brian A. Glasser
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555

Counsel for Plaintiff-Appellee

July 31, 2023

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on July 31, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

STEPTOE & JOHNSON LLP

/s/ Elyse D. Echtman

Elyse D. Echtman

Counsel for Defendant-Appellant